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**Genesis Elder Care National Center, Inc., d/b/a
Brandywyne Lakeside Center and United Food
and Commercial Workers International Union,
Local 1625, AFL-CIO. Case 12-CA-19717**

February 23, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND HURTGEN

Pursuant to a charge and amended charge filed on October 19 and November 19, 1998, respectively, the General Counsel of the National Labor Relations Board issued a complaint on November 20, 1998, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 12-RC-8050. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On January 19, 1999, the General Counsel filed a Motion for Summary Judgment. On January 22, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response. On February 5, 1999, the Charging Party filed a statement in support of the General Counsel's motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find there are no factual issues warranting a hearing regarding the Union's request for information. The complaint alleges, and the Respondent admits, that the Union requested the following information from the Respondent:

- (1) The names, addresses, telephone numbers, dates of hire, job titles, job classifications, rates of pay and shifts of all employees in the Unit.
- (2) A list of employee benefits for employees in the Unit, including any health insurance and retirement plans.
- (3) A copy of the Employee Handbook.

In its answer, the Respondent denies that the requested information is necessary for and relevant to the Union's role as bargaining representative. It is well established, however, that such information is presumptively relevant for purposes of collective bargaining inasmuch as the request relates to wages, hours, and terms and conditions of employment of the unit employees. The Respondent has not attempted to rebut the relevance of the information requested by the Union. We therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union. See *Mobay Chemical Corp.*, 233 NLRB 109, 110 (1977).

Accordingly, we grant the Motion for Summary Judgment¹ and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation with an office and place of business in Winter Haven, Florida, has been engaged in the business of providing long-term care for the elderly.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of \$250,000 and purchased and received at its Winter Haven, Florida facility goods and materials valued in excess of \$50,000 directly from points located outside the State of Florida.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ The Respondent's request to dismiss the complaint is therefore denied.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held April 4, 1997, the Union was certified on July 22, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time certified nursing assistants, senior certified nursing assistants, geriatric nursing assistant specialists, restorative aides, personal care assistants, receptionists, medical records clerk, unit clerks, activity assistants, maintenance assistants, gardener, dietary aides, cooks, laundry aides, and house-keeping aides employed by the Employer at the Brandywyne Lakeside Center, in Winter Haven, Florida, but excluding all other employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

On or about August 28, 1998, the Union, by letter, requested the Respondent to recognize and bargain and to furnish the information described above and, since about August 28, 1998, the Respondent has failed and refused. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after August 28, 1998, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Genesis Elder Care National Center, Inc., d/b/a Brandywyne Lakeside Center, Winter Haven, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with United Food and Commercial Workers International Union, Local 1625, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time certified nursing assistants, senior certified nursing assistants, geriatric nursing assistant specialists, restorative aides, personal care assistants, receptionists, medical records clerk, unit clerks, activity assistants, maintenance assistants, gardener, dietary aides, cooks, laundry aides, and house-keeping aides employed by the Employer at the Brandywyne Lakeside Center, in Winter Haven, Florida, but excluding all other employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on August 28, 1998.

(c) Within 14 days after service by the Region, post at its facility in Winter Haven, Florida, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 12 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 28, 1998.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 23, 1999

_____ John C. Truesdale,	Chairman
_____ Sarah M. Fox,	Member
_____ Peter J. Hurtgen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Food and Commercial Workers International Union, Local 1625, AFL-CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time certified nursing assistants, senior certified nursing assistants, geriatric nursing assistant specialists, restorative aides, personal care assistants, receptionists, medical records clerk, unit clerks, activity assistants, maintenance assistants, gardener, dietary aides, cooks, laundry aides, and house-keeping aides employed by us at our Brandywyne Lakeside Center, in Winter Haven, Florida, but excluding all other employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on August 28, 1998.

GENESIS ELDER CARE NATIONAL CENTER, INC.,
d/b/a BRANDYWYNE LAKESIDE CENTER